

## **The complaint**

Mr and Mrs B complain about the work National House-Building Council (NHBC) carried out to their property as part of a building warranty claim, and the time taken to complete the work.

## **What happened**

A common parts claim was made under the warranty due to water ingress. NHBC accepted and dealt with that claim. Mr and Mrs B own two properties that were involved in the claim (I'll call the one where they live 'apartment one', and the one that they rent out 'apartment two').

The balcony doors of both properties were replaced as part of the claim. Mr and Mrs B complained that the opening width to the balconies had reduced as a result. They were also unhappy with the length of time that it took NHBC to complete the repairs, and said they were prevented from renting out apartment two because of this.

NHBC accepted that Mr and Mrs B were caused inconvenience, and so offered them £850 compensation. Unhappy with this, they brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. She thought NHBC had been obliged to put right the damage, and it had done this. She didn't think that NHBC needed to compensate Mr and Mrs B for any loss of rent. Finally, she accepted that Mr and Mrs B had been caused inconvenience but thought the offer of compensation made by NHBC had been reasonable.

Mr and Mrs B didn't accept our investigator's findings, and so the matter has been passed to me for a decision.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

### Balconies

Mr and Mrs B are unhappy about the restricted access to the door opening to their balconies. They've explained that they bought the apartments because of the balconies (due to the view), and that they particularly wanted a wheelchair user to be able to access the balcony of apartment one. The reason for that is because one of them has an illness, which may mean they could become a future wheelchair user.

NHBC says the previous door opened internally, whereas the new door opens externally and has a restrictor fitted which is a manufacturer safety feature. That safety feature means the opening width to the balcony is restricted by around six inches, and is there to prevent people getting their fingers caught.

As our investigator has explained, NHBC was required under the policy to put right the damage caused by a defect covered under the policy.

NHBC has explained that the affected apartments within the apartment block needed to have the doors changed to open externally rather than internally, because if they had replaced the door with another inward opening door, it thought this would have caused some of the same issues with water ingress to re-occur.

That being the case, I think it was reasonable for NHBC to fit a door that opened externally. But the work it did should still comply with NHBC standards, as well as Building Regulations.

I've checked the NHBC standards, and these don't require balcony doors to have a minimum opening width.

Building Regulations require that people, regardless of disability, age or gender are able to gain access to buildings and use their facilities. The relevant section explains certain doors must have minimum clear opening widths, and those include the entrance to the property, as well as doorways that facilitate access into habitable rooms and to a WC. They don't include balcony doors.

Building Regulations do set out instances where a balcony door must have a minimum clear opening width, but that's part of optional requirements. Those only apply where there's a condition that the dwelling needs to meet the optional requirement as part of planning permission. As far as I'm aware, that's not the case with Mr and Mrs B's property.

Consequently, I think NHBC met its own standards and Building Regulations when fitting the balcony door, and it wasn't required to ensure that the door had a minimum opening width.

Having said that, I can fully appreciate Mr and Mrs B's concerns. They bought their property in the knowledge that if one of them becomes a future wheelchair user, they'd still be able to access the balcony. However, the changes to the door mean that's no longer the case, and if one of them does later need to use a wheelchair, they'd need to have the door adjusted (presumably by having the restrictor removed, if that's possible) in order to access the balcony.

If either Mr B or Mrs B had been a wheelchair user at the time the work was done, then I think it would have been appropriate for NHBC to come up with a solution to the problem, such as removing the restrictor, at the time. However, I don't think it needed to do that based on the possibility that one of them may become a wheelchair user in the future. So I won't be requiring NHBC to do anything further here.

#### Loss of rental income

The policy says that NHBC needs to pay any reasonable costs incurred for appropriate alternative accommodation if it's necessary for anyone normally living in the property to move out so that work can be done.

There are general exclusions that apply for all claims. The policy says:

*"NHBC will not be liable for*

*...*

*i Loss of enjoyment, use, income or business opportunity, inconvenience, distress or any other consequential loss affecting you or any loss of value of your Home."*

The work to apartment two was due to start in August 2018 and finish in October 2018 - though the work actually ended in November 2018. Mr and Mrs B's previous tenant chose to move out in 2017, and they didn't let out their property again until 2019.

Under the policy, NHBC was only required to cover the costs of alternative accommodation if Mr and Mrs B had a tenant who needed to move out whilst the work was being done, which wasn't the case. I agree with our investigator that the above exclusion meant that NHBC isn't liable for loss of income as a result of Mr and Mrs B not being able to rent out the property whilst work was taking place.

#### Length of time to complete the work

The original scope of works said that work to apartment one would begin in January 2018 and end in March 2018. Unfortunately, that was delayed by some months and the work didn't finish until September 2018. The work to apartment two was due to begin in August 2018 and end in October 2018, though this was delayed by around a month. NHBC has explained the delays were caused by a number of factors, including: - other residents, the weather, and unforeseen problems once the work had started.

Given the complexity of the work taking place and the number of apartments involved, it's not entirely surprising that there were delays. NHBC anticipated this and asked Mr and Mrs B to sign access agreements for both apartments. Those agreements made it clear that the scope of works couldn't be definitive until elements of the building fabric were opened up and inspected, and that this could impact the sequence and timing of the works.

Nevertheless, NHBC accepted that Mr and Mrs B were caused inconvenience. NHBC had also initially led them to believe that they would have a compensation payment, but then didn't proceed with this. NHBC thought this would have caused Mr and Mrs B unnecessary upset. It therefore offered Mr and Mrs B £850 compensation. I'm satisfied that was a reasonable amount in the circumstances.

#### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 1 January 2021.

Chantelle Hurn-Ryan  
**Ombudsman**